

**UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK**

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JOSÉ SANTIAGO ORTIZ,

Plaintiff,

Memorandum and Order

-VS-

03-CV-6395-CJS

HURLEY CORPORATION,

Defendant.

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Plaintiff filed a complaint alleging causes of action under the Americans with Disabilities Act (“ADA”) and the Age Discrimination in Employment Act (“ADEA”). The Court dismissed the ADA claim as untimely (# 5) and permitted the ADEA claim to go forward. Subsequently, defendants moved to dismiss the ADEA claim, and the Court granted that motion in a decision and order filed on March 16, 2005 (# 11) and judgment was entered for defendants on March 17, 2005. On May 6, 2005, plaintiff filed a Notice of Appeal and Motion for Extension of Time (# 14), filed on May 6, 2005, pursuant to Federal Rule of Appellate Procedure 4. On June 2, 2005, the Court found that plaintiff’s motion did not contain any basis for relief under Rule 4, and granted plaintiff until June 15, 2005 to file additional information, and granted defendant until June 22, 2005 to file any papers in opposition.

On June 17, 2005, plaintiff filed a letter with additional information, and followed that with another letter on August 17, 2005. Defendants have not filed any responsive papers.

Upon review of plaintiffs additional two letters, the Court again finds no information sufficient to justify granting relief under Federal Rule of Appellate Procedure 4. Plaintiffs

letters appear to address the merits of his original complaint, and not the factors the Court outlined in its prior Memorandum and Order:

Rule 4(a)(6) permits the district court to reopen the time to file an appeal "for a period of 14 days after the date when its order to reopen is entered, but only if all the following conditions are satisfied:

(A) the motion is filed within 180 days after the judgment or order is entered or within 7 days after the moving party receives notice of the entry, whichever is earlier;

(B) the court finds that the moving party was entitled to notice of the entry of the judgment or order sought to be appealed but did not receive the notice from the district court or any party within 21 days after entry; and

(C) the court finds that no party would be prejudiced.

Fed. R. App. P. 4(a)(6)(A)–(C) (2005).

Memorandum and Order, *Ortiz v. Hurley Corp.*, No. 03-CV-6395 (W.D.N.Y. Jun. 2, 2005), at 2. Accordingly, it is hereby

ORDERED, that plaintiff's application for an extension under Federal Rule of Appellate Procedure 4(a)(5) is denied; and it is further

ORDERED, that plaintiff's implied application to reopen the time to file an appeal under Federal Rule of Appellate Procedure 4(a)(6) is denied.

IT IS SO ORDERED.

Dated: August 30, 2005  
Rochester, New York

ENTER:

/s/ Charles J. Siragusa  
CHARLES J. SIRAGUSA  
United States District Judge